IN THE HIGH COURT OF DELHI

FAO No. 107/2006

M/s. Prestolite of India Ltd. ..... Appellant
! through: Mr. Mahfooz Nazki, Advocate

VERSUS

$ General Insurance Corp.
of India & Anr. ..... Respondents
^ through: Mr. Pradeep Gaur, Advocate and
Mr. Amit Kumar Pandey, Advocate

RESERVED ON: 29.11.2007

% DATE OF DECISION: 03.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Vide Ex. PW-1/2 M/s. Prestolite Of India Ltd. (hereinafter referred to as Prestolite) obtained a burglary policy of insurance from the National Insurance Company Ltd. a subsidiary of General Insurance Corporation of India. The policy of insurance Ex. PW-1/2 relates to the goods at the godown and the factory of Prestolite at Faridabad. The policy was obtained from the branch office of National Insurance Company at Sector 11, Faridabad (Haryana). Alleging that a

burglary had taken place. Prestolite lodged an FIR with the local police at Faridabad, Ex. PW-2/1 and simultaneously lodged a claim for indemnification of the loss suffered.

2. As pleaded in para 7 of the plaint the claim was lodged at the Faridabad Branch of the National Insurance Company. Being relevant for determination of the issue arising in the instant appeal, relevant averments in para 7 of the plaint may be noted. They are as under:-

> "7. On 5th September, 1977, the plaintiff company lodged its claim under the aforesaid insurance policy with defendant No. 2 through its branch office at Faridabad as the day to day business was being conducted in the Faridabad Branch of defendant No. 2."

3. The claim of Prestolite was repudiated by the National Insurance Company on 2.1.1980 vide Ex. PW-1/6. The letter has been addressed from the office of the Senior Divisional Manager of National Insurance Company at New Delhi.

4. It is admitted by the parties that the registered office of National Insurance Company is at Calcutta (West Bengal).

5. Vide impugned order dated 8.3.2006, holding that the courts at Delhi have no territorial jurisdiction to entertain the plaint, the issue framed:-

> "Whether this court has no territorial jurisdiction to entertain the present suit? OPD-1 & 2"

has been decided against Prestolite. The instant appeal challenges the said order.

6. Territorial Jurisdiction of the courts at Delhi has been pleaded in para 18 of the plaint as under:-

> "18. This Hon'ble Court has jurisdiction to try this suit as the Principal Offices of the defendants from where they function particularly in so far as the pledged goods are concerned are in New Delhi within the jurisdiction of this Hon'ble Court. It may be stated here that the offices of the defendants in Faridabad are merely like post office and they function all the time under the superintendence, control and directions of the defendants from New Delhi."

7. Ex facie, averments in para 18 of the plaint are at variance with the averments made in para 7 of the plaint.

8. The question of territorial jurisdiction of a civil court has to be answered with reference to Section 20 of the Code of Civil Procedure.

9. Provisions of Section 20 of the Code have to be considered with reference to the admitted fact that the contract of insurance was entered into at Faridabad a place outside Delhi and the policy was issued at Faridabad and related to a factory and a godown at Faridabad as also that claim was lodged at Faridabad. Additionally, the issue of jurisdiction would have to be decided with reference to the letter of repudiation Ex. PW-1/6 admittedly issued from New Delhi.

10. The test for determining the place where the cause of action accrues in suits arising out of contract was originally

clarified in the third explanation to Section 20 of the Code of Civil Procedure of 1882 which Provided that in suits arising out of contract the cause of action arises within the meaning of Section 20 at any of the following places, viz..

> "(1) the place where the contract was made;
>
> (2) the place where the contract was to be performed or performance thereof completed:
>
> (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

11. Although the third explanation has been omitted from the present Code of 1908 it still provides a working test for determining the place where the cause of action in suits arising out of contract arises. See *Arthur Butler and Co. Ltd. v. District Board of Gava.* Air 1947 Pat 134.

12. What is a cause of action? Lord Esher, M.R. in *Read v. Brown.*(1889) 22 Qbd 128 defined a cause of action as "every fact which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the Court. It does not comprise every Piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved."

13. Delivering the judgment of the Privy Council in *Mt. Chand Kaur v. Partap Singh*. (1888) Ilr 16 Cal 98 (PC) Lord

Watson said:

> "Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set out in the plaint as the cause of action, or, in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

14. Sir D. F. Mulla in his commentaries on the Code of Civil Procedure defines a cause of action as "a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit." (Volume I, Page 144. 13th Edition).

15. Applying this well known test to the facts of the case it is not the plaintiff case that the contract of insurance was made at Delhi nor has it been able to prove that the money under the policies is payable to it at Delhi in performance of the contract.

16. Condition No. 4 of the policy Ex. PW-1/2 reads as under:-

> “Upon the happening of any loss or damage likely to give rise to a claim under this policy the insured shall forthwith give notice thereof to the police and notice thereof in writing to the Issuing Office of the Company stating the circumstances of the loss or damage.”

17. Thus, the claim had to be settled at the issuing office. Admittedly, Prestolite has no office/branch office at

Delhi. Thus, if claim was allowed, payment had to be made at Faridabad.

18. Though not pleaded in the plaint but since it was urged that in view of rejection of the claim i.e. repudiation by National Insurance Company (Ex. PW-1/6) emanating from Delhi, courts at Delhi would have jurisdiction, issue of jurisdiction is being considered by me with reference to Ex. PW-1/6 being issued from Delhi.

19. Hardy, J. (as his Lordship then was) in Suit No. 407 of 1967, *Mrs. Sunanda Bakshi v. Life insurance Corporation of India* decided on May, 6. 1969 where the facts were much the same said :

> "Applying the test laid down in these decisions to the present case, it is apparent that it is not at all necessary for the plaintiff to prove for the success of her suit that the repudiation of liability under the policy was communicated by the defendant to her at Delhi. This fact has nothing to do either with the formation of the contract or with its performance nor has it anything to do with the payment of money by the defendant to the plaintiff in performance of the said contract."

20. Thus, rejection or repudiation of a claim in a contract of insurance was not treated as a part of a cause of action.

21. In *Indian Pottery Works v. Dominion of India*, (1962) 66 Cal WN 29 it was held that the communication of rejection was no part of the cause of action. The learned Judge said:

"The communication of rejection does not, in my view, form the infringement of the right ... ...

The cause of action has already occurred or arisen."

22. In that case the plaintiff entered into a contract with the Governor General for supply of goods. The Inspector rejected the goods. The plaintiff challenged the cancellation on these facts the learned Judge said:

"... ....the foundation of the cause of action for wrongful or illegal rejection is that the Officer-in-charge. Ordinance Inspection Depot did not perform the contractual obligations. The evidence in the present case is that the rejection occurred at a place outside the jurisdiction of this Court. I am therefore of the opinion that the Plaintiff cannot contend that the cause of action has arisen within the jurisdiction of this Court."

23. The alternative submission with reference to the Divisional Office of National Insurance Office being at Delhi, the same needs to be noted and rejected for the reason the same relates to the explanation to Section 20 which reads as under :-

"Explanation :- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office at such place."

24. No doubt the Divisional Office of the National Insurance Company is at Delhi, but if no part of the cause of action has arisen at the place where the branch of subordinate office is situated the mere fact of the corporation having a

branch office will not give the Court of that place jurisdiction to entertain a suit. The law is well settled that if no part of the cause of action arises at the place of the branch office, the mere fact of the Corporation having a branch office at the place will not give the Court jurisdiction: *See Bhola Nath Aggarwal v. The Empire of India Life Assurance Co. Ltd.*, AIR 1948 Lah 56; *Bharat Insurance Co.. Delhi v. Wasudeo Ramchandra*- AIR 1956 Nag 203 and *Nedungadi Bank Ltd. v. Central Bank of India Ltd.* MANU/KE/0016/1961.

25. The issue is no longer res integra. It has been late to rest in the decision reported as 1991 (4) SCC 270 *Patel Roadways Vs. Prasad Trading Co.* In para 9 of the report it was held as under:-

> Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and

> the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

26. Even otherwise, the Divisional Office of the National Insurance Company cannot be equated with the Principal Office. In *Palmer v. Caledonian Railway Co* (1892) 1 Qb 823 the term principal office was explained by Lord Esher M.R. He said:

> "That being so, we have a Scotch company to be served with a writ, and the question is whether Carlisle is the principal office, or one of the principal offices, of the company. I should have thought without any authority that the principal office of the company must be the place at which the business of the company is controlled and managed. The only office that answers this description is the company's office at Glasgow. No

> part of the business of the company is controlled or managed, in the sense that it is independently controlled or managed at Carlisle. The directors meet at Glasgow, and the office from which and through which they manage the business of the company is at Glasgow. If the expression "principal office" means the office at which the business of the company, is managed, it does not apply to Carlisle; and the service of the writ at the office there was not a service at the principal office of the company, and must be set aside."

Lopes, L. J. said:

> "It was contended that the Caledonian Railway Company was in point of fact two companies - one Scotch and the other English; one domiciled and resident in England, and the other in Scotland. I cannot agree to this. It appears to me to be one company and that a Scotch company, having its principal office at Glasgow, What I understand by principal office is that office where the General Superintendence and management of the business of the railway is carried on, and as to that I may refer to Garton v. Great Western Rly. Co., (EB & E 837)."

27. Looked at from any angle, courts at Delhi would have no jurisdiction to entertain the plaint.

28. The submission made by counsel for the appellant that the issue has been decided after many years and if plaint is refiled at Faridabad trial will take considerable time and hence on equitable grounds the impugned order should be set aside is neither here nor there for the reason the defendant raised the issue of territorial jurisdiction at the very inception when written statement was filed. An issue of pertaining to jurisdiction was framed. Prestolite took a calculated risk of

invoking jurisdiction of courts at Delhi and must bear the consequence thereof.

29. The appeal is dismissed.

30. No costs.

31. LCR be returned.

December 3, 2007 PRADEEP NANDRAJOG
MM JUDGE